

BRETT O'NEIL

Office of the Commissioner of Securities and
Insurance, Montana State Auditor (CSI)
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Attorney for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF:)	CASE NO.	SEC-2013-115
)		
)	NOTICE OF PROPOSED AGENCY	
JOSEPH J. BIONDOLILLO, individually)	ACTION	
and in his capacity as a salesperson for)	AND OPPORTUNITY FOR HEARING	
Chelsea Financial Services,)		
)		
Respondent.)		

Staff of the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. §§ 30-10-101 et seq. (the Act), is proposing to the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), that she take specific action against Joseph J. Biondolillo (Respondent) for violations of the Act. The Commissioner has authority to take such action under the provisions of §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, and 30-10-309. Service of process is pursuant to § 30-10-107(8).

In particular, CSI recommends specific action against Respondent, including imposition of appropriate fines and revocation of Respondent's registration pursuant to the provisions of the Act.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action.

ALLEGATIONS OF FACT

1. Respondent is a CSI registered salesperson. He has had three reportable items on the Financial Regulatory Authority (FinRA) Central Registration Depository (CRD) prior to the CSI's investigation. At all times relevant to this matter, he was a registered salesperson working for Chelsea Financial Services (CFS), a Montana registered broker-dealer firm.

2. The CSI approved Respondent's application for registration on or about March 30, 2010. He was employed as a salesperson at CFS's branch office in Staten Island, New York, during the relevant time period.

3. As part of his registration, and due to his reported items, Respondent was subject to heightened supervision. His responsibilities under heightened supervision were:

- a. Abide by all terms of heightened supervision;
- b. Promptly forward all incoming correspondence to his supervisor;
- c. Promptly forward a copy of all outgoing correspondence to consumers to his supervisor;
- d. Promptly forward any complaint to his supervisor;
- e. Fully participate in CFS's continuing education plan; and
- f. Execute a monthly attestation that copies of all correspondence (incoming and outgoing) and all complaints have been forwarded to a supervisor.

4. On or about January 10, 2013, K.F., a Montana investor and client of Respondent, submitted a complaint to the CSI regarding Respondent. Over the course of the CSI's investigation of that complaint, the CSI received additional complaints from Montana investors V.H., D.H., and E.C. regarding Respondent.

5. All four complainants alleged that Respondent traded excessively in their accounts and charged them excessive commissions associated with the trades. Additionally, some complaints included allegations of unauthorized margin trading and complaints that Respondent ignored orders to not trade on margin.

6. On or about January 15, 2013, CFS was contacted about Respondent's actions.

7. During February 2013, CFS and Respondent signed four official responses to the Montana complainants.

8. As a result of its request for information, the CSI determined Respondent acted as the salesperson on 22 of 26 Montana CFS accounts. A review of those accounts demonstrated:

- a. 13 accounts had less than five trades or were never funded by the clients;
- b. five accounts were tied to the four Montana complainants;
- c. one account was tied to a FINRA complaint; and
- d. three more accounts had questionable transactions.

9. In addition to the account reviews, the CSI interviewed the account-holders of the accounts mentioned in ¶¶ 8(b)-(d) of this document, and the four original complainants.

10. The CSI's investigation revealed the following:

- a. Respondent charged eight Montana clients commissions totaling \$148,629.43 out of the \$274,099.13 principal they had invested;
- b. Respondent traded approximately 11 different securities 221 times in Montana investor accounts while registered in Montana;
- c. The average Looper turnover rate in the eight Montana accounts was 27.4;
- d. Respondent rolled over I.R.A. accounts into high risk investments, oftentimes contrary to the clients' investment objectives;
- e. Respondent engaged in heavy trading in all eight Montana account holders' accounts;

- f. Montana account holders' annual income representations were fabricated on their new account forms;
- g. Montana account holders' net worth statements were fabricated on their new account forms;
- h. Montana account holders' previous investment experience was fabricated on their new account forms;
- i. Respondent traded on margin in Montana investors' accounts without authorization;
- j. Montana account holders' annual investment objectives were fabricated on their new account forms;
- k. There was discretionary trading in a Montana investor's account when CFS policy prohibited such trading;
- l. Respondent promised stop-loss coverage that never materialized; and
- m. Respondent sold stocks when directed to stop selling them in Montana investors' accounts.

CONCLUSIONS OF LAW

1. The Montana State Auditor is the Commissioner of Securities and Insurance (Commissioner) pursuant to §§ 30-10-107, 2-15-1903, and 33-1-301.
2. The Commissioner has jurisdiction over this matter pursuant to §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, and 30-10-307.
3. The Securities Commissioner administers the Act, pursuant to §§ 2-15-1901 and 30-10-107.
4. The Commissioner shall administer the Act to protect the investor, persons engaged in securities transactions, and the public interest, pursuant to § 30-10-102(1).
5. Respondent is registered as a salesperson pursuant to § 30-10-201.
6. Section 30-10-301 states a salesperson may not participate in fraudulent and other prohibited practices.

7. Fraudulent and other prohibited practices include any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person. § 30-10-301(1)(c). Admin. R. Mont. 6.10.401 defines such practices. Each unethical practice is a separate violation of § 30-10-301(1)(c).

8. Admin. R. Mont. 6.10.401(1)(b) states that it is fraudulent and unethical for a broker-dealer or salesperson to induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

9. Respondent violated Rule 6.10.401(1)(b) when accounts under his control traded with an effective Looper turnover rate of 27.4.

10. Rule 6.10.401(1)(c) states that it is fraudulent and unethical to recommend to a customer the purchase, sale, or exchange of a security without grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

11. Respondent violated Rule 6.10.401(1)(c) when he engaged in excessive trading and traded on margin based upon fabricated documents.

12. Admin. R. Mont. 6.10.401(1)(d) states that it is fraudulent and unethical for a broker-dealer or salesperson to execute a transaction on behalf of a customer without authorization to do so.

13. Respondent violated 6.10.401(1)(d) when he executed trades without consulting clients and failed to document such trading.

14. Admin. R. Mont. 6.10.401(1)(k) states that it is fraudulent and unethical for a broker-dealer or salesperson to charge unreasonable and inequitable fees for services performed.

15. Respondent violated 6.10.401(1)(k) when he charged Montana clients commissions of \$148,629.43 out of the \$274,099.13 principal they invested.

16. Admin. R. Mont. 6.10.401(1)(o) states that it is fraudulent and unethical for a broker-dealer or salesperson to guarantee a customer against loss in a securities account of the customer carried by the broker-dealer.

17. Respondent violated 6.10.401(1)(o) when he offered a Montana investor stop-loss coverage on the account which he did not provide.

18. Cumulatively, these violations also constitute a business practice that operated as a fraud or deceit upon a person or persons under § 30-10-301(1)(c).

19. Section 30-10-301(1)(b) states that it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state to make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

20. Respondent violated § 30-10-301(1)(b) when he:

- a. Entered inaccurate information on customer account forms without the knowledge or consent of investors;
- b. Failed to notify investors that he engaged in margin trading in their account and against their wishes;
- c. Failed to notify investors that he was engaging in trading that was excessive in nature in violation of the Act;
- d. Failed to notify investors that the securities transactions in their accounts were unsuitable based on the clients' actual investment objectives in violation of the Act; and
- e. Failed to notify investors that the commissions he was charging them were excessive in nature and in violation of the Act.

21. Section 30-10-201(13)(g) states a salesperson may not participate in dishonest and unethical practices. Admin. R. Mont. 6.10.401(2) defines unethical practices under this section. Each unethical practice is a separate violation of § 30-10-201(13)(g).

- a. Admin. R. Mont. 6.10.401(2)(c) prohibits a salesperson from establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.
- b. Respondent violated 6.10.401(2)(c) when he entered fictitious account information on various Montana client accounts.
- c. Admin. R. Mont. 6.10.401(2)(g) states a salesperson may not engage in conduct such as manipulative or deceptive practices.
- d. Respondent violated 6.10.401(2)(g) when he:
 - i. Promised stop loss cap on the account and did not;
 - ii. Traded on margin without permission;
 - iii. Engaged in discretionary trading; and
 - iv. Sold stocks after being told not to sell.

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. Order Respondent to pay fines not to exceed \$5,000 for each identifiable violation of the Act, pursuant to § 30-10-305(3).
2. Order Respondent's registration as a salesperson in Montana be revoked for violating provisions of the Act, pursuant to § 30-10-201.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to take the actions listed in the relief requested, and to take any other action necessary to ensure Montana investors are protected.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, and to present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of

Notice of Proposed Agency Disciplinary Action and Opportunity for Hearing

this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, §§ 2-4-601, et seq. including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and the nature of the hearing.

If you wish to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Brett O'Neil, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to § 30-1-701(2).

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.* (1973), 164 Mont. 139, 520 P.2d 103, and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

CONTACT WITH COMMISSIONER'S OFFICE


If you have questions or wish to discuss this matter, please contact Brett O'Neil, legal counsel for the CSI, at 840 Helena Avenue, Helena, MT, 59601, 406-444-2040. If an attorney represents you, please make any contacts with the CSI through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you without

further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 6th day of June, 2013.



BRETT O'NEIL
Attorney for CSI

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 15 day of June, 2013 by US mail, certified first-class postage paid, to the following:

Martin H. Kaplan, Esq.
Gusrae Kaplan Nusbaum PLLC
120 Wall Street
New York, New York 10005

A handwritten signature in blue ink, appearing to be "MHK", is written above a horizontal line.